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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

YI-CHI SHIH,
aka "Yichi Shih,"
aka "Yuqi Shi," et al,

Defendants.

No. CR 18-50(B)-JAK

GOVERNMENT'S STATEMENT RE COMMERCE
CONTROL LIST AND ENTITY LIST IN
RESPONSE TO COURT'S ORDER (DKT.
374); MEMORANDUM OF POINTS AND
AUTHORITIES; EXHIBITS

Hearing Date: April 18, 2019
Hearing Time: 8:30 a.m.
Location: Courtroom of the
Hon. John A.
Kronstadt

Plaintiff United States of America, by and through its counsel
of record, the United States Attorney for the Central District of

1 California and Assistant United States Attorneys Judith A. Heinz,
2 James C. Hughes, Melanie Sartoris, William M. Rollins, and Khaldoun
3 Shobaki, hereby files its statement, in response to the Court's order
4 (Dkt. 374), describing what it intends to introduce at trial about
5 the Commerce Control List/Commerce Country Chart and the Entity List.

6 This statement is based upon the attached memorandum of points
7 and authorities, the files and records in this case, and such further
8 evidence and argument as the Court may permit.

9 Dated: April 11, 2019

Respectfully submitted,

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13 Chief, National Security Division

14 /s/ Judith A. Heinz

15 JUDITH A. HEINZ
16 JAMES C. HUGHES
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18 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

The Second Superseding Indictment charges defendant Yi-Chi Shih ("defendant") and six named co-defendants with knowingly and willfully conspiring to violate the International Emergency Economic Powers Act ("IEEPA") in four ways:

1. conspiring to export items from the United States to the People's Republic of China ("PRC") without having first obtained the required licenses from the Department of Commerce ("DOC"),

2. conspiring to export items from the United States to Chengdu Gastone Technology Co., Ltd. ("CGTC") without having first obtained the required licenses from the DOC,

3. conspiring to export items from the United States to the PRC without filing Electronic Export Information ("EEI") through the Automated Export System ("AES"), and

4. conspiring to export items from the United States to CGTC without filing EEI through the AES. (Dkt. 223, at 2-29.)

With respect to ways 1 and 2 above, the government must prove the conspirators agreed:

- to export an item from the United States to the PRC without having first obtained the required license (way 1); **OR**
- to export an item from the United States to CGTC without having first obtained the required license (way 2).

1 The license requirement referenced in ways 1 and 2 stems from two
2 different sources: (1) the Commerce Control List in coordination with
3 the Commerce Country Chart (way 1), and (2) the Entity List (way 2).¹

4 In response to the Court's order (Dkt. 374), the government
5 describes below what evidence it intends to introduce at trial about
6 the Commerce Control List/Commerce Country Chart and the Entity List
7 and their purposes, including anticipated evidence about the context
8 for why these lists are created. (See Dkt. 374, at 2.) The
9 government does not include in this statement evidence about these
10 lists that was seized from defendant's e-mail accounts, residence,
11 and digital devices that it intends to introduce to prove defendant's
12 knowledge and willfulness.

13 **II. The Purposes of the Export Control Provisions of the Export**
14 **Administration Regulations**

15 To provide context for the jury to understand the export control
16 provisions, the government intends to introduce some testimony
17 regarding their purpose, consistent with those purposes as stated in
18 the Export Administration Regulations ("EAR"). The EAR states, "The
19 export control provisions of the EAR are intended to serve the
20 national security, foreign policy, non-proliferation of weapons of
21 mass destruction, and other interests of the United States, which in
22 many cases are reflected in international obligations or

23 ¹ With respect to ways 3 and 4 above, the government must prove
24 the conspirators agreed:

- 25 • to export an item from the United States to the PRC
without filing EEI through the AES (way 3); **OR**
- 26 • to export an item from the United States to CGTC without
filing EEI through the AES (way 4).

27 The EEI filing requirement referenced in ways 3 and 4 has two
28 different sources: (1) the value of the item being exported, and/or
(2) the existence of a licensing requirement.

1 arrangements." 15 C.F.R. § 730.6. The EAR states further, "Some
2 controls are designed to restrict access to items subject to the EAR
3 by countries or persons that might apply such items to uses inimical
4 to U.S. interests." (Id.) The EAR continues, "These include
5 controls designed to stem the proliferation of weapons of mass
6 destruction and controls designed to limit the military and terrorism
7 support capability of certain countries." (Id.)

8 **III. Commerce Control List/Commerce Country Chart Evidence**

9 To prove the licensing requirement, the government intends to
10 introduce testimony about one of the ways exports are controlled --
11 the Commerce Control List in coordination with the Commerce Country
12 Chart. The U.S. Company B Monolithic Microwave Integrated Circuit
13 Amplifiers ("MMICs") that defendant and his coconspirators obtained
14 in December 2013 were controlled for export. Specifically, a license
15 from the DOC was required before they could be exported lawfully from
16 the United States to the PRC. The basis for the license requirement
17 was the Commerce Control List and the Commerce Country Chart, both of
18 which are contained in the EAR.

19 The Commerce Control List "includes items (i.e., commodities,
20 software, and technology) subject to the export licensing authority
21 of [the Bureau of Industry and Security]." 15 C.F.R. § 738.1(a)(1).
22 The Commerce Control List (15 C.F.R. Pt. 774, Supp. 1) is organized
23 by categories and Export Control Classification Numbers. Category 3
24 of the Commerce Control List contains licensing control information
25 for electronics. Export Control Classification Number ("ECCN")
26 3A001.b.2 contains the licensing control information for MMICs.
27
28

1 (Exh. A.)² As Exhibit A shows, MMICs are controlled for export based
2 on frequency range, fractional bandwidth, and peak saturated power
3 output.

4 The licensing control information in the Commerce Control List
5 is coordinated with the Commerce Country Chart, which "contains
6 licensing requirements based on destination and Reason for Control."
7 15 C.F.R. § 738.1(a)(1); (see Exh. B).³ The Reasons for Control that
8 applied to the U.S. Company B MMICs obtained by defendant in December
9 2013 were Anti-Terrorism, National Security, and Regional Stability.
10 (See Dkt. 335, Exh. C.)⁴ An exporter must consult the Commerce
11 Control List to determine any potential item-specific licensing
12 requirement, and then cross-reference with the Commerce Country Chart
13 to determine any country destination-specific licensing requirement.
14 The Reasons for Control in the Commerce Country Chart further inform
15 the exporter as to the applicability of any exceptions to the
16 licensing requirement. In combination with the Commerce Control List
17 ("CCL"), the Commerce Country Chart allows the public to determine
18 whether a license is required for the export of items on the CCL to
19 any country in the world. 15 C.F.R. § 738.1(b).

20 In December 2013, defendant and his coconspirators obtained from
21 U.S. Company B four identical wafers that contained multiple MMICs,
22

23 ² Attached hereto as government exhibit A is a true copy of the
24 section of the Commerce Control List that pertains to MMICs.

25 ³ Attached hereto as government exhibit B is a true copy of
26 Commerce County Chart obtained from Westlaw.

27 ⁴ For the Court's convenience, attached hereto as government
28 exhibit C are true copies of the relevant licensing determinations
made by Licensing Officer Carlos Monroy. These licensing
determinations list both the ECCN number and the Reasons for Control.
These licensing determinations were previously filed with the Court
as Exhibit B, to Dkt. 335.

1 many of which were controlled for export based on their frequency
2 range, fractional bandwidth, and peak saturated power output. To
3 prove that a license from the DOC was required to export from the
4 United States to the PRC these MMICs, the government will introduce
5 at trial the testimony of a DOC licensing officer (Carlos Monroy).⁵
6 The government expects that the DOC licensing officer will testify
7 about the purpose, structure, and application of the EAR, including
8 the Commerce Control List and the Commerce Country Chart (including
9 the Reasons for Control), consistent with the above paragraphs. The
10 government expects that the DOC licensing officer will also testify
11 consistent with his attached licensing determinations (Exh. C) and
12 the expert witness notices disclosed to the defense and filed
13 previously with the Court. (See Dkt. 335, Exh. B, at 47-55; Dkt.
14 339-1, Exh. A, at 4; Dkt. 339-3, Exh. C, at 3; Dkt. 339-4, Exh. D, at
15 3.) Based on defendant's motions in limine, his proposed jury
16 instructions, and his counsel's representations during court
17 appearances, the government expects defendant will vigorously contest
18 the application of the EAR to the items defendant and his
19 coconspirators exported and conspired to export from the United
20 States to the PRC. Therefore, a complete explanation of the EAR by a
21 DOC licensing officer is essential for the jury to be able to
22 understand the evidence, and intelligently apply the law to the
23 facts.

27 ⁵ The government will also introduce the testimony of
28 Christopher D. Nordquist, Ph.D., who will testify about the MMICs'
frequency range, fractional bandwidth, and peak saturated power
output.

1 **IV. Entity List Evidence**

2 In March 2015, defendant and his coconspirators obtained from
3 U.S. Company B an additional four wafers, containing multiple MMICs.
4 All of the MMICs on these wafers were controlled for export from the
5 United States to CGTC because CGTC and its associated entities --
6 QTC, CETC 29, and Tian Hung -- had been placed on the Entity List
7 eight months earlier, on August 1, 2014.⁶ To prove a DOC license had
8 to be obtained prior to the export of these MMICs, the government
9 intends to introduce testimony and exhibits about another way exports
10 are controlled -- the Entity List.

11 To prove this license requirement, the government intends to
12 introduce at trial (1) copies of the attached Federal Register
13 publications,⁷ and (2) testimony by a DOC licensing officer to
14 establish the following:

15 1. The Entity List is a list on which foreign entities
16 (including individuals and companies) are placed after a formal
17 multi-agency review of information.⁸ The criteria for adding an
18 entity, or those acting on behalf of an entity, to the Entity List is
19 reasonable cause to believe, based on specific and articulable facts,
20

21 ⁶ As alleged in the Second Superseding Indictment, CGTC built a
22 semiconductor fabrication plant to manufacture MMICs -- the same
23 technology that defendant conspired to export from the United States
24 to the PRC illegally. QTC and CETC 29 financed CGTC's operations.
25 Both before and after CGTC, QTC, and CETC 29 were placed on the
Entity List, defendant was the President and a Technical Consultant
at CGTC. Co-defendant Jieru Deng was a QTC General Manager and a
Vice-President/General Manager at Tian Hang.

26 ⁷ For the Court's convenience, attached hereto as government
27 exhibit D are true copies of the Federal Register publications.
These Federal Register publications were previously filed with the
Court as Exhibit A, to Dkt. 335.

28 ⁸ See 15 C.F.R. § 744 Supp. No. 4.

1 that the entity has been involved, is involved, or poses a
2 significant risk of being or becoming involved, in activities that
3 are contrary to the national security or foreign policy interests of
4 the United States.⁹

5 2. On August 1, 2014, the United States government placed the
6 following entities, among others, on the Entity List:

- 7 • Chengdu Gastone Technology Co., Ltd. ("CGTC"), in Chengdu,
8 China;
- 9 • Qing'an International Trading Group, also known as Qing'an
10 International Trading Group Company ("QTC"), in Beijing,
11 China;
- 12 • China Electronics Technology Group Corporation 29 Research
13 Institute, aka CETC 29th Research Institute, and China
14 Southwest Electronic Equipment Research Institute (SWIEE)
15 ("CETC 29"), in Chengdu, China; and
- 16 • Tian Hang Yang Pu Technology Investment Ltd. Co. ("Tian
17 Hang") in Beijing, China.

18 These four entities were placed on the Entity List on the basis of
19 their involvement in activities contrary to the national security and
20 foreign policy interests of the United States -- specifically, the
21 multi-agency committee determined it had reasonable cause to believe
22 that all four companies had been involved in the illicit procurement
23 of commodities and technologies for unauthorized military end use in
24 China.¹⁰ These four entities, CGTC, QTC, CETC 29, and Tian Hang, have
25 been on the Entity List continuously from August 1, 2014 to the
26 present.

27 _____
28 ⁹ 15 C.F.R. § 744.11(b).

¹⁰ See 79 FR 44684 (Aug. 1, 2014).

1 3. On March 21, 2016, the United States government modified
2 the Entity List to add the alias "Chengdu Jiashi Technology Co." to
3 the entity listing for CGTC.¹¹

4 4. On August 1, 2018, the United States government modified
5 the Entity List to add the additional alias "Chengdu HiWafer
6 Semiconductor" to the entity listing for CGTC.¹²

7 5. For CGTC, QTC, CETC 29, and Tian Hang, placement on the
8 Entity List imposed the requirement that a license be obtained from
9 the United States Department of Commerce, Bureau of Industry and
10 Security prior to the export, reexport, or transfer (in-country) of
11 any item subject to the Export Administration Regulations, and denial
12 of such a license was, and is, presumed.¹³ The license requirements
13 apply to any transaction in which items are to be exported,
14 reexported, or transferred (in-country) to CGTC, QTC, CETC 29, or
15 Tian Hang or in which any of these four entities act as purchaser,
16 intermediate consignee, ultimate consignee, or end-user. In
17 addition, no license exceptions have been available since August 1,
18 2014, for exports, reexports, or transfers (in-country) to any of
19 these four entities.

20 The parties conferred about a stipulation covering the facts set
21 forth in paragraphs 1-5 above but were unable to reach agreement.
22 Given the depth of the dispute, and defendant's apparent intention to
23 contest the consequences of placement on the Entity List, the
24 government expects that a complete explanation of the Entity List by
25 the DOC licensing officer, as well as the introduction of the Federal
26

27 ¹¹ See 81 FR 14957 (Mar. 21, 2016).

28 ¹² See 83 FR 37426 (Aug. 1, 2018).

¹³ See 79 FR 44684 (Aug. 1, 2014).

1 Register publications, will be necessary for the jury to be able to
2 understand, and make informed judgments about, the evidence.

3 **V. Additional Evidence Regarding the Commerce Control List and the**
4 **Entity List Relevant to Defendant's Knowledge and Willfulness**

5 The government has not included in this statement a description
6 of the evidence referencing the Commerce Control List and the Entity
7 List that was seized from defendant's e-mail accounts, residence, and
8 digital devices. The government intends to introduce this evidence
9 at trial to prove defendant's knowledge and willfulness -- his
10 knowledge of export regulations and his knowledge that his conduct
11 was unlawful. The government previously filed examples of this
12 evidence with the Court. (See Dkt. 335, Exhs. C, D, E, and F.)

13 **VI. Conclusion**

14 The government respectfully requests that this Court GRANT the
15 government's motions in limine numbers one and two, and DENY
16 defendant's motion in limine number 5.